

Statement

of

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on behalf of

National Association of Chemical Distributors

before the

U.S. Senate
Committee on Homeland Security and Governmental Affairs

on

Sensibly Reforming the Chemical Facility Anti-Terrorism
Standards

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Good afternoon, Chairman Johnson, Ranking Member Peters, and distinguished members of the committee. My name is Matthew Fridley. I am the Safety, Health, and Security Manager for Brenntag North America, Inc., a chemical distribution company headquartered in Reading, Pennsylvania.

In addition to my role at Brenntag North America, Inc., I am currently the chair of the Chemical Sector Coordinating Council (CSCC). The CSCC has a strong history of working in partnership with both private and public sectors to develop industry practices that build a culture of safety and security. I am also the vice chair of the Regulatory Affairs and Security Committee for the National Association of Chemical Distributors (NACD), on whose behalf I am testifying today.

I want to thank you for allowing me to participate in this important roundtable and am pleased to provide input on the Chemical Facility Anti-Terrorism Standards (CFATS) program.

About Brenntag North America, Inc. and NACD

Brenntag North America, Inc. is part of the Brenntag Group, which entered the chemical distribution business in 1912. Brenntag is currently the largest chemical distributor in the world and the second largest chemical distributor in the United States. Brenntag North America, Inc. operates over 180 facilities in the U.S. with customers in all 50 states. Brenntag North America, Inc. employs more than 5,100 people who manage over 20,000 different products sold to over 30,000 customers.

NACD's nearly 430 member and Affiliate companies represent more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. NACD member companies are vital to the chemical supply chain providing products to over 750,000 diverse companies such as aerospace, agriculture, cosmetics, detergents, electronics, automotive, plastics, paints and coatings, pharmaceuticals, food ingredients, water treatment, and more.

Brenntag has been an active member of NACD for over 35 years. NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. NACD added a specific Security Code, which encompasses many CFATS regulations, to NACD Responsible Distribution that consolidated many prior requirements and enhanced others. These requirements apply to all NACD members, including those that do not have facilities subject to CFATS. Since NACD adopted security requirements as part of NACD Responsible Distribution, our members have spent nearly \$50,000,000 to enhance site security programs further.

Support for Long-Term Reauthorization of CFATS

The chemical industry is responsible for more than a quarter of the U.S. GDP (\$768 billion), supports the production of almost all commercial and household goods, and is essential to economic growth. The chemical industry provides more than 800,000 skilled, good-paying American jobs. The business of chemistry is America's largest exporting sector, supplying an eighth of the world's chemical needs. The total value of U.S. chemical exports exceeds \$174 billion.

Brenntag North America, Inc. and NACD support a long-term reauthorization of CFATS. I believe the CFATS program has made the chemical industry and our nation much more secure. From the time of the program's establishment in 2007, the industry has invested significant capital and training resources towards enhanced or augmented security measures at our facilities.

In fact, Brenntag North America, Inc. – as one of the most regulated Department of Homeland Security (DHS) CFATS companies in the United States – would know the importance of the CFATS program better than most. While these resources did not necessarily assist in growing business, they were nonetheless important to ensure the security of the company, our employees, and the community.

The Need for CFATS in Light of Threat Environment

Evaluating and enhancing our security procedures based on the input of experienced DHS personnel has undoubtedly been beneficial to my company and the chemical distribution industry. However, I believe it is possible the program could be administered with less of an administrative and financial burden on industry.

While it is true that in the program's first few years there were some growing pains, the DHS Infrastructure Security Compliance Division team was able to make substantial improvements to run the CFATS program more efficiently, enhance security, and reduce burden by listening to those in chemical distribution. Many of the objectives of the Risk-Based Performance Standards (RBPS) are already integral to the operations of the chemical industry, including complying with the regulations of other agencies (such as the Drug Enforcement Agency), industry association standards (such as NACD Responsible Distribution), insurance recommendations, and good chemical practices. However, there are still areas in which DHS could improve, such as clarifying the process for what security measures facilities should take based on potential threat increases. The ongoing supply of chemicals and associated services is critical in times of emergency; therefore, simply ceasing operations is not a viable option for businesses during times of higher risk.

Overall Experience with CFATS Process Through DHS

DHS has generally taken a non-adversarial, consultative, and reasonable approach in implementing the CFATS regulations. DHS has made significant improvements to the program following the program's 2014 reauthorization. Changes in the leadership of the CFATS program helped establish a commitment to work with the regulated chemical industry, along with the Chemical Sector Coordinating Council to have a positive impact on chemical security across the United States.

Examples DHS's improvements include achieving the intent of the RBPS and the preparation of Site Security Plans (SSPs) and Alternate Security Plans (ASPs). That same approach has remained throughout the entirety of the program. While the initial process was burdened with cumbersome, confusing, and inefficient paperwork, this aspect of the program has improved over time. DHS has also greatly improved the Chemical Security Assessment tool, the online portal for submitting Top Screens, Security Vulnerability Assessments, and SSPs and ASPs. However, it should be noted that the process for SSP and ASP revisions and updates remains challenging for distributors. This is something we are willing to continue to work with DHS to resolve.

It has been our experience that DHS staff, in both the field and at headquarters, have generally been knowledgeable, professional, courteous, and willing to provide consultation for facilities that request it. Additionally, DHS staff typically arrange their site visits in advance, unlike many other government agencies.

First Responder Coordination/Information Sharing

As good stewards of the DHS CFATS program, along with the NACD Responsible Distribution program, Brenntag goes above and beyond the regulatory requirements for certain information sharing and outreach with first responders and other local entities.

An example of this coordination is a recent occurrence at one of our highly regulated DHS facilities in the Southeast. After months of preparation with DHS CFATS inspectors, Transportation Security Administration officers, FBI Weapons of Mass Destruction agents, Joint Terrorism Task Force members, and local police and fire department bomb/arson units, we completed a live exercise drill of an unknown package at our facility. The live exercise drill was developed to allow our company to practice emergency response procedures to ensure we knew what we were supposed to do in that situation. Once we simulated the call to the first responders, our employees became spectators, and we allowed the emergency response community to exercise as they needed.

These types of drills are important for both our industry and emergency responders. Without our partnerships that are developed through the CFATS program, drills such as these would not be an easy task to achieve.

Protecting Confidential Information

As important as it is to coordinate and share information with emergency responders, it is equally important to only provide the facilities' sensitive security information on a need-to-know basis.

The current Chemical-terrorism Vulnerability Information process has the correct balance to ensure facilities communicate and share need-to-know information with those agencies to enable them to respond effectively (RBPS 9). During the inspections process, all DHS inspectors verify that the facility has performed its yearly requirement for outreach with local responders and will not approve the facility's SSP if this outreach has not occurred.

NACD members, such as Brenntag, take engagement with local communities seriously and recognize the value in forming strong relationships with those communities. To that end, the chemical distribution industry complies with an array of federal and state laws and regulations requiring communication of certain information about regulated facilities with first responders and other local entities. In addition to information sharing requirements in DHS's CFATS, the chemical distribution industry complies with the following:

1. EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 304: Emergency Notification
2. EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 311: Safety Data Sheets (SDSs)
3. EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 312: Tier I, II
4. EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 313: Toxic Release Inventory (TRI)
5. EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 103: Release Reporting
6. EPA Clean Air Act: Risk Management Program
7. EPA Toxic Substances Control Act (TSCA): Chemical Data Reporting
8. DOT Hazardous Materials Regulations: Emergency Response and Release Reporting
9. OSHA Hazard Communication Standard
10. OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard
11. OSHA Process Safety Management (PSM) Standard

The CFATS-regulated community shares information with a variety of entities under the regulatory and legal regimes listed above. NACD, along with Brenntag, believes these requirements appropriately address public safety and facilitate the proper level of dialogue between regulated-entities and the public. Therefore, we oppose additional information-sharing requirements in CFATS reauthorization legislation.

Recognition for Participation in Industry Program

I support the consideration of incorporating, in whole or in part, verified industry-standard programs, such as NACD Responsible Distribution, into the evaluation of whether a facility has met the intent of the applicable RBPS. NACD members and others who participate in robust industry stewardship programs have made a strong commitment to operate their facilities safely and securely. Recognizing these responsible companies through simple measures like less frequent inspections would allow DHS to prioritize resources to concentrate on the "outliers" or bad actors that don't participate in these programs and that may pose a greater security risk to themselves or the population at large.

Appendix A Changes

Currently, if DHS proposes changes to Appendix A: Chemicals of Interest, then those changes must be subject to notice and comment. NACD, along with Brenntag, supports the status quo, as well as codifying that DHS be subject to notice-and-comment rulemaking for any proposed changes to Appendix A: Chemicals of Interest in the next reauthorization. A transparent process that encourages stakeholder engagement is key, as changes made to Appendix A that may be perceived as minor could impact a facility's CFATS risk tiering. Should DHS attempt to alter Appendix A, any rulemaking must be based on the level of risk, scientific data, and a cost-benefit analysis.

Simplification of the Change Process

While calls and emails placed to DHS's CFATS helpline regarding changes to SSPs and ASPs are generally acknowledged quickly, responses to these questions can sometimes take considerably longer and may be too ambiguous to be useful. A quicker response rate and clear guidance by DHS personnel in answering inquiries would ensure timely and accurate solutions for regulated companies. Rapid and frequent changes in product offerings, procurement, and inventory are core to the business of many chemical distribution companies. Prompt accommodation regarding DHS documents is needed for new Chemicals of Interest (COI) or newly increased Screening Threshold Quantities for existing COI. In most cases, the existing facility infrastructure and procedures will suffice for meeting the intent of the RBPS.

Maintain Security Focus to Avoid Further Duplicative Regulations with Other Regulatory Agencies

The CFATS program is the only federal program focused on security at facilities with certain chemicals, and this must remain the program's sole purpose. The chemical distribution industry is required to comply with various regulatory programs administered by other agencies (e.g., EPA, OSHA, DOT, etc.) to ensure the safety of the communities in which the chemical distribution facilities serve and are located. Potential expansion of the CFATS program into areas regulated by other agencies, including EPA, OSHA, and DOT, would result in duplicative, confusing, and contradictory regulatory requirements – thereby eroding the purpose of this program: to secure our nation's high-risk chemical facilities from terrorist exploitation. The DHS CFATS program allows for facilities to leverage other agencies requirements to meet CFATS compliance.

While each agency should maintain its particular focus and certain subject-specific nuance, multiple agencies and programs require contingency plans/procedures, which entail multiple, often duplicative elements. These include DHS (CFATS/RBPS); DOT; EPA (RCRA - hazardous waste); EPA (Risk Management Plan); OSHA (Process Safety Management Plan); DEA (especially for List 1 chemicals); and FDA (especially the Food Safety Modernization Act International Adulteration rule).

Government agencies performing compliance inspections have required separate, comprehensive contingency plans for their particular agency program, even while acknowledging that such separate plans may be redundant with other agency plans. A single master contingency plan, with appropriate sections and nuance, would be much more efficient and, more importantly, effective in meeting the intent of a contingency plan.

Furthermore, NACD Responsible Distribution requirements also include contingency plans and procedures, with third-party verifications (audits). Insurance carriers generally require a company to have a special type of contingency plan, a Business Continuity Plan. These plans are often as comprehensive as the contingency plans required by government agencies and often have much more applicability and effectiveness in real-world situations.

Conclusion

That said, as the threat environment is long-term, so too should be the authorization of the CFATS program. NACD and Brenntag North America support CFATS and look forward to working with the committee on legislation to reauthorize this important security regulation in the coming weeks and months. A multi-year reauthorization of CFATS would provide needed certainty and enhance the security of chemical facilities and our nation. Both industry and DHS need reasonable predictability.

The DHS CFATS program has been looked upon at the international level as a model program for developing security programs within the G7 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction and Global Congress. The Global Congress assembles a community of over 30 countries committed to countering chemical and explosives terrorism by bad actors and their access to chemical agents. CFATS is recognized globally as a model chemical-security framework worldwide, and DHS frequently responds to requests to work with other governments as they seek to build cultures of chemical security on a par with the security-culture CFATS has cultivated in the United States.

On behalf of both the National Association of Chemical Distributors and Brenntag North America, Inc., I appreciate this opportunity to present our views on this important issue. I look forward to your questions.